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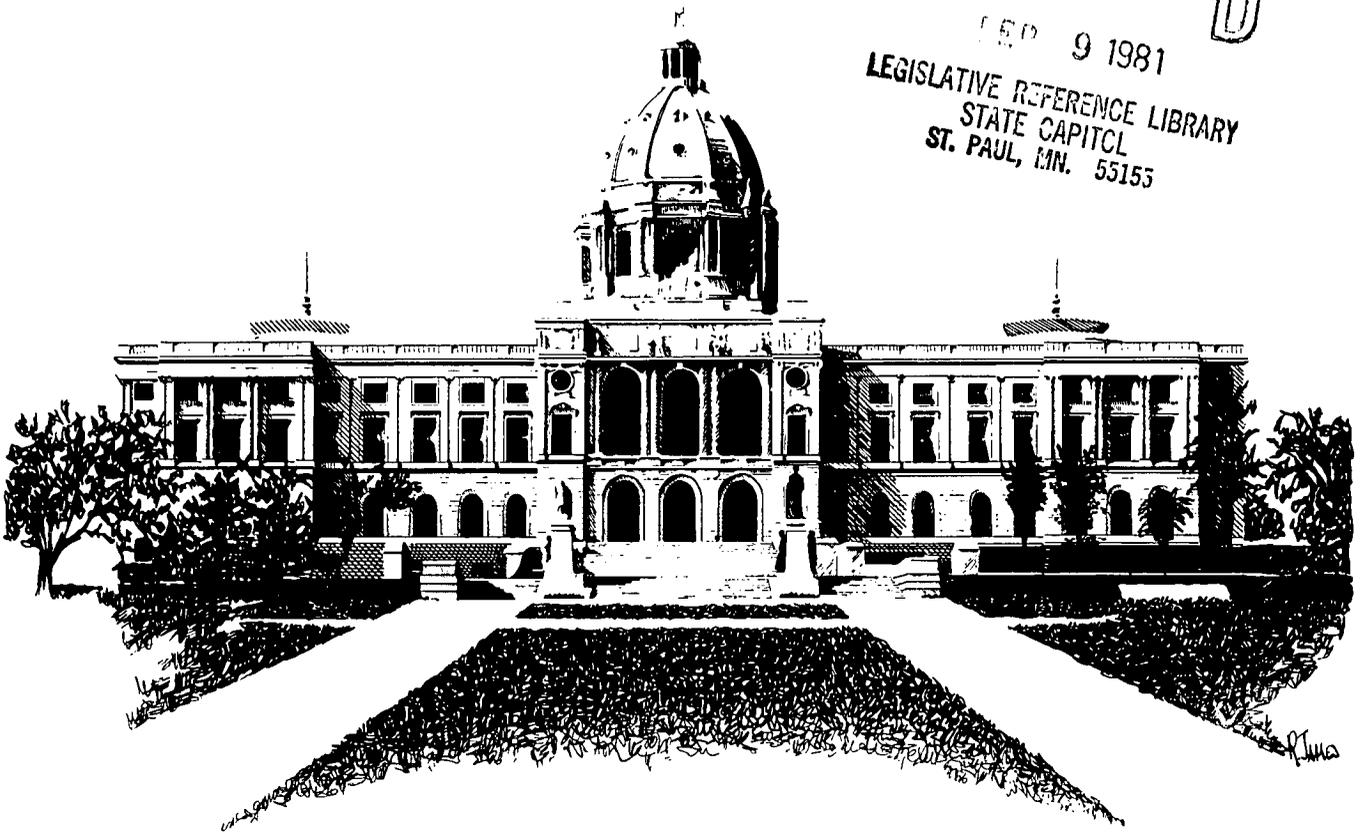
STATE REGISTER

STATE OF MINNESOTA

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VOLUME 5, NUMBER 32

February 9, 1981

Pages 1211-1230



Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 5			
33	Monday Feb 2	Monday Feb 9	Monday Feb 16
34	Monday Feb 9	Friday Feb 13	Monday Feb 23
35	Friday Feb 13	Monday Feb 23	Monday Mar 2
36	Monday Feb 23	Monday Mar 2	Monday Mar 9

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at \$120.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota. Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at \$2.25 per copy.

Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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CONTENTS

MCAR AMENDMENTS AND ADDITIONS

Inclusive listing for Issues 27-32..... 1214

PROPOSED RULES

Commerce Department Insurance Division

Replacement of Group Insurance Coverage..... 1215

Labor and Industry Department Occupational Safety and Health Division

Revisions to the Occupational Safety and Health
Standards 1217

ADOPTED RULES

Public Welfare

Bureau of Social Services Bureau of Mental Health

Administration of Child Care Facilities Act Grant-
in-aid and the Reimbursement for Mentally Ill
Patients Relocated by the Closing of Hastings
State Hospital..... 1218

SUPREME COURT

Decisions Filed Friday, January 30, 1981..... 1221
Decision Filed Tuesday, January 27, 1981 1222

STATE CONTRACTS

Commerce Department

Office of Consumer Services Residential Utility Consumer Unit

Rate Design and Cost Studies for Northwestern Bell
Telephone Company 1223

Transportation Department

Clearwater County Highway Department

Highway Detail Engineering 1223

OFFICIAL NOTICES

Commerce Department

Banking Division

Bulletin No. 2336: Maximum Lawful Rate of
Interest for Mortgages and Contracts for Deed for
the Month of February 1981 1224

Education Department

Vocational-Technical Education Division

Outside Opinion Sought on Rules and Changes in
Rules for Secondary Vocational Education 1224

Natural Resources Department

Petition(s) Concerning the Designation of Certain
Public Waters and Wetlands in Douglas County.... 1224

Natural Resources Department

Soil and Water Conservation Board

Change of Meeting Date 1226

NOTICE

How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION**. Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

The **PROPOSED RULES** section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The **ADOPTED RULES** section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All **ADOPTED RULES** and **ADOPTED AMENDMENTS TO EXISTING RULES** published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted **TEMPORARY RULES** appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative listings of rule action in the **MCAR AMENDMENTS AND ADDITIONS** list on the following schedule:

Issues 1-13, inclusive	Issue 39, cumulative for 1-39
Issues 14-25, inclusive	Issues 40-51, inclusive
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
Issue 27-38, inclusive	

The listings are arranged in the same order as the table of contents of the MCAR.

MCAR AMENDMENTS AND ADDITIONS

TITLE 2 ADMINISTRATION

Part 1 State Building Code

2 MCAR § 1.18601 (proposed) 1159

Part 2 Employee Relations Department

2 MCAR § 2.198 (adopted) 1160

TITLE 3 AGRICULTURE

Part 2 Board of Animal Health

3 MCAR §§ 2.001, 2.011, 2.012 (adopted) 1112

TITLE 4 COMMERCE

Part 1 Commerce Department

4 MCAR §§ 1.9251-1.9252 (proposed) 1215

4 MCAR §§ 1.9288-1.9289, 1.9291-1.9292 (proposed) 1187

TITLE 5 EDUCATION

Part 1 Education Department

5 MCAR §§ 1.0104-1.0105, 1.01041-1.01044,
1.01046-1.01047 (proposed) 1131

TITLE 6 ENVIRONMENT

Part 2 Energy Agency

6 MCAR § 2.2120 (proposed) 1111

6 MCAR §§ 2.2301-2.2303, 2.2305-2.2307
(adopted temporary) 1161

6 MCAR §§ 2.3101-2.3108 (adopted temporary) 1091

Part 4 Pollution Control Agency

6 MCAR § 4.0001 (proposed) 1066

6 MCAR § 4.6086 (proposed) 1069

6 MCAR §§ 4.8014-4.8015, 4.8024-4.8025

(adopted), WPC 2-3, 5-13, 16-21, 23, 26, 29,
31-32 (repealed) 1136

6 MCAR §§ 4.9001-4.9006, 4.9008 (proposed) 1080

TITLE 7 HEALTH

Part 1 Health Department

7 MCAR § 1.008 (adopted) 1190

TITLE 8 LABOR

Part 1 Labor & Industry Department

8 MCAR § 1.7001 (MOSHC 1) (proposed) 1217

TITLE 12 SOCIAL SERVICE

Part 2 Public Welfare Department

12 MCAR §§ 2.009, 2.017 (adopted) 1218

12 MCAR § 2.065 (adopted temporary) 1163

12 MCAR § 2.016 (formerly 2.020) (adopted) 1191

Part 3 Housing Finance Agency

12 MCAR §§ 3.053-3.054 (proposed) 1189

PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
 2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
 3. of the manner in which persons shall request a hearing on the proposed rules;
- and
4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Commerce Insurance Division

Proposed Rules Governing Replacement of Group Insurance Coverage

Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the Insurance Division of the Department of Commerce proposed to adopt the above-entitled rules without a public hearing. The commissioner has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subd. 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, § 15.0412, subd. 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

John Ingrassia
Supervisor of the Life and Health Section
Insurance Division
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101
Telephone: (612) 296-2202

Authority for adoption of these rules is contained in Minnesota Statutes, § 60A.082. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Mr. Ingrassia upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of

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PROPOSED RULES

these rules to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Ingrassia.

These proposed rules are intended to implement the provisions of Minnesota Statutes, § 60A.082 as required by that law.

The proposed rules, if adopted, would establish standards and procedures by which a person covered by a group life, group accidental death and dismemberment, group disability income or group medical expense insurance, would not be denied benefits solely because of a change in the insurer writing the coverage.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Mr. Ingrassia.

January 26, 1981

Michael D. Markman
Commissioner of Insurance

Rules As Proposed (all new material)

4 MCAR § 1.9251 Authority and scope. Rules 4 MCAR §§ 1.9251 and 1.9252 apply to all policies and subscriber contracts issued or provided by an insurance company, non-profit service plan corporation or health maintenance organization on a group basis, and are promulgated pursuant to the authority of Minn. Stat. § 60A.082.

4 MCAR § 1.9252 Continuation of coverage in situations involving replacement of one insurer by another.

A. Purpose. The purpose of this rule is to indicate which insurer is responsible for coverage in those cases where one insurer's plan of benefits replaces a prior plan which offered similar benefits.

B. Liability of the prior insurer. The prior insurer remains liable to the extent of its accrued liability and extension of benefits.

C. Liability of the succeeding insurer.

1. Each individual who is eligible under the succeeding insurer's plan, with respect to provisions regarding class eligibility, activity at work, and nonconfinement, shall be covered by the succeeding insurer's plan of benefits as of the effective date of that plan.

2. Each individual who is not eligible for coverage in accordance with 4 MCAR § 1.9252 C.1. shall nevertheless be covered by the succeeding insurer in accordance with the following rules, provided that such individual was validly covered under the prior plan on the date it was discontinued and such individual is a member of a class of individuals otherwise eligible for coverage under the succeeding insurer's plan.

a. The minimum level of benefits which shall be provided by the succeeding insurer shall be the lesser of:

- (1) The benefits available under the prior insurer's plan reduced by any benefits payable by the prior insurer; or
- (2) The benefits available under the succeeding insurer's plan.

b. Coverage shall be provided by the succeeding insurer pursuant to 4 MCAR § 1.9252 C.2. at least until the earlier of the following dates:

- (1) The date the individual becomes eligible under the terms of the succeeding insurer's plan; or
- (2) The date the individual's coverage would otherwise terminate, for each type of coverage, in accordance with the individual termination of coverage provisions of the succeeding insurer's plan.

3. Each individual subject to a pre-existing condition limitation contained in the succeeding insurer's plan shall nevertheless be covered by the succeeding insurer, provided that such individual was validly covered under the prior plan on the date it was discontinued. The minimum level of benefits which shall be provided by the succeeding insurer for a pre-existing condition shall be the lesser of:

- a. The benefits of the new plan determined without regard to the pre-existing condition limitation; or
- b. The benefits of the prior plan.

4. In applying any deductible or waiting period in its plan, the succeeding insurer shall give credit for the full or partial satisfaction of the same or similar provisions under the prior plan. In the case of deductible provisions, the credit shall apply for the same or overlapping benefit periods, to the extent the same expenses are recognized under the terms of the succeeding insurer's plan and are subject to a similar deductible provision.

5. In any situation where a determination of the prior insurer's benefits is required by the succeeding insurer, at the succeeding insurer's request the prior insurer shall furnish a statement of the benefits available and other pertinent information sufficient to permit the succeeding insurer to verify or determine benefits.

6. Benefits of the prior plan shall be determined in accordance with the definitions, conditions, and covered expense provisions of the prior plan rather than those of the succeeding plan.

4 MCAR §§ 1.9253-1.9254 [Reserved for future use.]

Department of Labor and Industry Occupational Safety and Health Division

Proposed Revisions to the Occupational Safety and Health Standards

Request for Comment

Please take notice that Harry D. Peterson, Commissioner of the Minnesota Department of Labor and Industry, has determined that the following revisions to the Occupational Safety and Health Codes shall be promulgated pursuant to Minn. Stat. § 182.655 (1980) establishing, modifying, or revoking Occupational Safety and Health Standards as printed below. This is an action to adopt standards that have already been proposed and adopted by the Federal Occupational Safety and Health Administration.

Complete copies of the specific standards, changes, additions, deletions and corrections are available by writing: Deputy Commissioner, Minnesota Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101.

Interested persons are hereby afforded a period of thirty (30) days to submit written data or comments on the rules proposed. Any interested person may file with the commissioner written objections to the proposed rules stating the grounds therefor and such person may request a public hearing on such objections.

Harry D. Peterson
Commissioner

Rules as Proposed

MOSHC 1 (8 MCAR § 1.7001) Minnesota Occupational Safety and Health Codes and Rules, MOSHC 1 (§ 1.7001) are hereby changed and modified by incorporating and adopting by reference changes, additions, and corrections made prior to January 1, 1981 to the following parts of Title 29 of the Code of Federal Regulations:

Part 1910 Occupational Safety and Health Standards for General Industry as published in Part II, Volume 39, No. 125 of the *Federal Register* on October 24, 1978 and corrected on November 7, 1978; and Part 1926 Construction Safety and Health Regulations as published in Part VII, Volume 44, No. 29 of the *Federal Register* on February 9, 1979:

A. Mechanical Power Presses: Corrections to Final Rule, as published in the *Federal Register*, Volume 45, No. 28 on Friday, February 8, 1980 (pages 8593-8594). This notice announces corrections of typographical errors contained in the current mechanical power press standard, 29 CFR 1910.217. The provisions of 1910.217 were derived from the American National Standards Institute ANSI B11.1-1971 national consensus standard. When the provisions of ANSI B11.1-1971 were reorganized into the OSHA standard in 1910.217, several errors were made in the internal references; paragraphs (d)(3), (d)(5) and (d)(9)(i) contain references to paragraph (b) where they should refer to paragraph (c). Additionally, when OSHA General Industry Standards (Part 1910) were republished, a typesetting error resulted in 1910.217(b)(8)(iv) referring to a "nominal 240-volt d.c. supply obtained from a transformer," where it should read, "a nominal 120-volt a.c. supply obtained from a transformer." These are the only corrections made to this standard.

B. Commercial Diving Operations: Correction to Final Rule, as published in the *Federal Register*, Volume 45, No. 121, on Friday, June 20, 1980 (page 41634). As originally published, the commercial diving operations standard, 29 CFR 1910.423, was inadvertently misnumbered and included two paragraphs labeled (c)(4). The purpose of this notice is to correct the numbering error and label the second (c)(4) paragraph as (c)(5); subsequently, the original (c)(5) paragraph is renumbered (c)(6). No further corrections or changes are made to this standard.

C. Guarding of Low-Pitched Roof Perimeters During the Performance of Built-up Roofing Work, as published in the *Federal Register*, Volume 45, No. 222, on Friday, November 14, 1980. This notice amends Subpart M of 29 CFR Part 1926, by adding a standard for the guarding of low-pitched-roof perimeters during the performance of built-up roofing work. It provides for the use

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PROPOSED RULES

of motion-stopping safety systems, warning lines, and safety monitoring systems in certain specified situations, requires the use of safety belt or guardrail systems at hoisting and storage areas, prohibits the use of mechanical equipment near unprotected roof sides or edges and requires training for all employees engaged in built-up roofing work. It also clarifies the application of the existing standards on perimeter guarding contained in Subpart M. Existing Section 1926.500 is amended by adding a new paragraph (g) "Guarding of Low-pitched Roof Perimeters During the Performance of Built-up Roofing Work;" adding a new paragraph (p) to 1926.502 "Definitions Applicable to This Subpart;" and adding Appendix A to Subpart M for 1926.500(g) to provide guidelines to assist employers in complying with the appropriate requirements of Subpart M.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Public Welfare Bureau of Social Services Bureau of Mental Health

Repeal of Rules Relating to the Administration of Child Care Facilities Act Grant-In-Aid and the Reimbursement for Mentally Ill Patients Relocated by the Closing of Hastings State Hospital (12 MCAR §§ 2.009 and 2.017)

Notice is hereby given that the rules published at *State Register*, Volume 5, Number 19, pp. 752-753, November 10, 1980 (5 S.R. 752) are now repealed as proposed.

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

Walter O. and Catherine Noreen,

Appellants,

v.

The Commissioner of Revenue,
Docket No. 2878

Appellee.

and

Pearl M. Ranta,

Appellant,

v.

The Commissioner of Revenue,
Docket No. 2944

Appellee.

Judge Jack Fena

Order Dated January 26, 1981.

These two cases, involving substantially identical income tax issues, were consolidated for trial by Order of the Court at a pre-trial hearing held on October 12, 1979. The trial was held on December 19, 1979. Appellants Noreen were represented by J. B. Kelly, Attorney at Law, and Appellant Ranta was represented by Paul Simonson, Attorney at Law. Appellee was represented by Paul R. Kempainen, Special Assistant Attorney General, Department of Revenue, State of Minnesota.

The Court having heard and considered the evidence introduced by the parties, the oral arguments of counsel and being fully advised in the matter and upon all the files, testimony, records and proceedings herein,

Decision

It is hereby ordered, that the Commissioner of Revenue's determination of tax liability relating to the income tax liabilities of both Appellants for the taxable year ending December 31, 1978, be and hereby is reversed.

Said Order being based upon the following Findings of Fact, Conclusions of Law and Memorandum, which is made a part of this decision.

Findings of Fact

Jack Fena

I. The Appeal of Walter O. and Catherine Noreen:

A. The Appellants, Walter O. and Catherine Noreen, at all times material to this appeal, were cash-basis, calendar year taxpayers and residents of the State of Minnesota. During the taxable year at issue herein, 1978, Walter Noreen was retired and receiving annuity payments from the United States Civil Service Commission Bureau of Retirement, Insurance, and Occupational Health.

B. Prior to his retirement on January 7, 1977, Walter Noreen was employed by the Federal Government in a classified civil service position subject to the Civil Service Retirement Act, 5 U.S.C. § 8331, et seq. (1964). During said employment he contributed a total of \$24,139.00 to his Federal Civil Service annuity contract, which amount was withheld from his payroll check and deposited with the Treasury of the United States to the credit of the "Civil Service Retirement and Disability Fund."

C. After his retirement, Appellant, Walter Noreen, began receiving Federal Civil Service annuity payments. In 1977, annuity payments received were in the total amount of \$18,289.40. In 1978, annuity payments received were in the total amount of \$21,810.00.

D. On his 1977 Federal income tax return, Appellant reported his 1977 Federal annuity payments of \$18,289.40. This amount was correctly excluded on Schedule E of said return as a recovery of his contributions to the annuity contract for Federal income tax purposes.

E. On his 1978 Federal income tax return, Appellant reported his 1978 Federal annuity payments of \$21,800.00. The amount of \$5,849.60 was correctly excluded on Schedule E of said return as the recovery of the remainder of his contributions to the annuity contract for Federal income tax purposes. Consequently, the amount of \$15,960.40 was included in Appellants' adjusted gross income for Federal income tax purposes.

F. On line 1 of their 1978 Minnesota income tax return, Appellants included the \$15,960.40 of the annuity payments shown on their Federal income tax return. On line 5 of their 1978 State income tax return, the amount of \$15,960.40 was subtracted upon the ground it reflected recovery of a portion of the contribution to the Federal annuity contract for State income tax purposes.

G. Upon audit of the Appellants' 1978 State income tax return, Appellee disallowed the subtraction of \$15,960.40, and allowed a subtraction of only \$2,259.99. As a result of this change, adjustments also were made in computing the additional State income tax liability reducing Appellants' 1978 Federal income tax deduction and itemized deductions were reallocated.

H. Upon the basis of these audit changes, Appellee calculated an additional state income tax liability against Appellants in the amount of \$613.00 for 1978. An Order of the Commissioner assessing this liability was issued on March 7, 1979.

I. The Appellants Noreen have filed a timely Notice of Appeal to the Tax Court from the Commissioner's Order.

II. The Appeal of Pearl M. Ranta:

A. The Appellant, Pearl M. Ranta, is a cash-basis, calendar year taxpayer and resident of the State of Minnesota. During the taxable year at issue herein, 1978, Pearl Ranta was the recipient of a surviving spouse's pension payment in the amount of \$12,054.00 from the United States Civil Service Commission.

B. Pearl Ranta received her Federal pension payment as a result of her spouse's employment by the Federal Government. During said employment Appellant's spouse contributed a total of \$17,607.00 to the Federal Civil Service pension plan.

C. On Schedule E of their Federal income tax returns for years prior to 1978, Pearl Ranta and/or her spouse had already excluded the full amount (\$17,607.00) of her spouse's employee's contributions to the pension plan for purposes of calculating their federal adjusted gross income in those years.

TAX COURT

D. On her duly filed 1978 Federal income tax return, Pearl Ranta included the entire amount (\$12,054.00) of her 1978 pension payment in the calculation of her federal adjusted gross income for that year. No amount of the pension payment was excluded on her 1978 Schedule E as a recovery of employee's contributions.

E. On line 1 of her duly filed 1978 Minnesota income tax return, Pearl Ranta used her 1978 federal adjusted gross income as the starting point for calculating her state tax. This amount included her \$12,054.00 Federal pension payment. However, on line 5 of her 1978 return, Pearl Ranta subtracted the amount of \$12,054.00 upon the ground that it represented a recovery of her spouse's contributions to the plan.

F. Upon audit of the Appellant's 1978 return, the Commissioner of Revenue disallowed Pearl Ranta's subtraction of the entire \$12,054.00 in pension payments from her federal adjusted gross income, and instead allowed a subtraction of only \$830.00 calculated pursuant to Minn. Stat. (1978) § 290.01, subd. 20(b) (6). An additional adjustment (not at issue herein) was also made to Appellant's itemized deductions, disallowing a claimed deduction of \$32.00 for medical transportation expense.

G. Upon the basis of these audit changes, the commissioner calculated an additional state income tax liability against Appellant in the amount of \$1,050.91, plus interest. An Order of the Commissioner assessing this liability was issued on May 29, 1979.

H. The Appellant Ranta has filed a timely Notice of Appeal to the Tax Court from the Commissioner's Order.

Conclusions of Law

1. By enacting L. 1978, c. 721, art. VI, amending Minn. Stat. § 290.01, subd. 20 (b) (6) (1978), the legislature intended to tax public pensions for state purposes by including in Minnesota Gross Income only the employer's share of the public pensions, subject to a specific subtraction up to \$7,200.00.

2. The provisions of Minn. Stat. § 290.08, subd. 4 (1957) allows a taxpayer to exclude from Minnesota Gross Income an amount equal to their contribution to the pension and/or annuity plan which is being included in the Minnesota Gross Income for the first time after December 31, 1977, the effective date of L. 1978, c. 721, art. VI.

Memorandum

The issue in the two cases before the Court is the question of the excludability of the taxpayer's contribution to a pension plan when the taxpayer has recovered this contribution prior to the taxable year beginning January 1, 1978.

Minn. Stat. § 290.08, subd. 4 (1957) allows a Minnesota taxpayer to exclude from his Minnesota Gross Income this contribution recovery to the extent that said recovery is received after January 1, 1978. Since this recovery of a taxpayer's contribution is also excludable from the taxpayer's Federal Adjusted Gross Income, there is no modification required upon the Minnesota tax return.

Prior to January 1, 1978, all public pensions were excluded from Minnesota Gross Income pursuant to Minn. Stat. § 290.08, subd. 6, which was repealed effective for tax years commencing after December 31, 1977. Prior to its repeal, this statute read as follows:

Subd. 6. Pensions, benefits, and allowances from State and United States. Amount, including interest, received by any person from the United States or from the State of Minnesota or any of its political or governmental subdivisions, *either as a refund of contributions to or by way of payment as a pension, public employee retirement benefit, unemployment compensation benefit, social security benefit or railroad retirement or unemployment compensation benefit, family allotment, or other similar allowance;* (Emphasis added.)

Therefore, although Minn. Stat. § 290.08, subd. 4(d) allowed a taxpayer to exclude his contribution to the public pension to the extent that the pension payment was received from a government entity, the entire pension was not includable in the Minnesota Gross Income and the taxpayer was not required to take advantage of the exclusion provided for by Minn. Stat. § 290.08, subd. 4(d).

Since the repeal of § 290.08, subd. 6, can the taxpayer first exclude his contribution? To answer this question, we are left with interpreting these two statutes, which are in conflict as applied to this narrow question. Under Minn. Stat. § 290.01, subd. 20(b) (6), the pension payments received by a former government employee are taxable for the first time commencing with the year 1978 and, for the first time, these public pension payments are includable in a Minnesota residents gross income. The fairest resolution of this conflict is to allow these taxpayers to exclude their contributions. Under the standard rule of statutory construction, a statute is to be constructed where reasonably possible, so as to avoid irreconcilable differences and conflict with another statute. The Court feels that unless a taxpayer is allowed to apply Minn. Stat. § 290.08, subd. 4(d) to his public pension at the time they first become includable in Minnesota Gross Income, this conflict will exist and to eliminate this conflict the Court herein allows this exclusion.

The decision is also based on the Court's interpretation of the legislative intent at the time the legislature enacted L. 1978, c.

721, art. VI. Based on the transcripts of testimony before the tax committee which were put into evidence and the testimony of the commissioner's representative, the Court believes the intent of the legislature was to allow this exclusion. It is clear that there was no intent to eliminate the exclusion of a taxpayer's contribution to a public pension when this contribution is recovered in years after January 1, 1978. If this would have been the intent of the legislature, it would have repealed Minn. Stat. § 290.08, subd. 4 (d). The Court also believes that it was not the intent of the legislature to treat a taxpayer who, for the first time, is required to include his public pension in his Minnesota Gross Income on a different basis.

It is the contention of the commissioner that the first phrase of Minn. Stat. § 290, subd. 20(b)(6) prevents this interpretation. This phrase, which states:

"To the extent included in Federal Adjusted Gross Income, notwithstanding any other laws to the contrary, . . ."

was intended to prevent application of Minn. Stat. § 290.08, subd. 4(d) from being applicable to such taxpayers. It is the Court's reading of this statute that this language is applicable to the taxable income covered by the statute, specifically the income received by a taxpayer which represents an employer's share of a public pension. It appears that the legislature was addressing a specific item of income in Minn. Stat. § 290.01, subd. 20(d)(6), that being the employer's share of a public pension and it did not anticipate that there would be this discrepancy between taxpayers who receive return of their contribution prior to January 1, 1978 and those taxpayers who receive return of their contribution after January 1, 1978.

The Court also believes that this opinion will result in the most equitable treatment of taxpayers who are similarly situated. If the Court were to adopt the commissioner's interpretation of these statutes, we would create a situation where the taxpayer who receives for the first time a public pension after January 1, 1978 would be allowed to exclude his contribution and the taxpayer who had received this refund prior to January 1, 1978 would not. The commissioner has argued that this is not a proper application of this equitable consideration since the income received as a public pension prior to January 1, 1978 was excluded entirely from the taxpayer's Minnesota Gross Income. However, this was true as to any person receiving a public pension whether he had contributed or not to the pension plan. In adopting the commissioner's interpretation, the subject taxpayers will be penalized either in comparison to the taxpayer who commences to receive his public pension after January 1, 1978 or in the alternative, to the taxpayer who had received this public pension but had not contributed to his pension plan.

This inequitable treatment was not intended by the legislature. Prior to 1978 public pensions were not includable in Minnesota Gross Income. Since after January 1, 1978 they are now includable, the portion of said public pensions which represent the taxpayer's own contribution is excludable pursuant to Minn. Stat. § 290.08, subd. 4(d).

Jack Fena, Judge

SUPREME COURT**Decisions Filed Friday, January 30, 1981****Compiled by John McCarthy, Clerk**

50381/351, 50382/352, 50383/353, 49445/354 The Commissioner of Revenue 50381 v. John L. Richardson, *et al.*, Relators, The Commissioner of Revenue 50382 v. Nathan Lipson, *et al.*, Relators, The Commissioner of Revenue 50383 v. Kenneth M. Anderson, *et al.*, Relators, and Conrad J. Carr, *et al.*, Relators, 49445 v. The Commissioner of Revenue. Tax Court.

In 1974, Minnesota individual income tax laws limited the maximum deduction for contributions to self-employment retirement plans to \$2,500, even though the maximum deduction for federal income tax purposes was \$7,500.

Since contributions to all self-employment retirement plans received the same tax treatment under Minnesota law in 1974, no violation of uniformity and equal protection exists.

Relators will not be subject to double taxation because relators' contributions to self-employment retirement plans which could not be deducted in 1974 will escape taxation when received as retirement income.

Affirmed. Todd, J.

49602/348 (1979) Beverly Roepke, *et al.*, v. Western National Mutual Insurance Company, Appellant. Rice County.

Under the peculiar facts of this case, where decedent was the president and sole shareholder of the named insured corporation and the vehicles insured were used as family vehicles and neither decedent nor his household owned any other vehicles, we conclude that the corporate veil should be pierced and stacking of the insurance coverages allowed.

Affirmed. Scott, J.

SUPREME COURT

50862/346 Catherine C. Weiss, Appellant, v. Farmers Insurance Group. St. Louis County.

Where a pedestrian is struck by an insured automobile which is one of two separately-insured vehicles owned by the driver, stacking of the basic economic loss coverage of the non-involved vehicle will not be permitted under the Minnesota No-Fault Automobile Insurance Act.

Affirmed. Scott, J.

50328/Sp. State of Minnesota v. Raymond O. Posten, Appellant. Hennepin County.

Evidence of defendant's guilt of criminal sexual conduct in the first degree was sufficient.

Trial court did not err in denying a request by the prosecution to sequester witnesses while the complainant testified.

Trial court did not commit prejudicial error in admitting hospital records which defense counsel did not have an opportunity to see before trial.

Trial court did not abuse its discretion in admitting, pursuant to R. 804(b)(5), Minn. R. Evid., testimony concerning statement made by complainant while she was having a bad dream.

Trial court's erroneous exclusion of evidence offered by defendant concerning his character with respect to children was nonprejudicial.

Affirmed. Scott, J. Concurring specially, Wahl and Simonett, JJ.

50861/Sp. James Michael Gordon as trustee for the next of kin of Chad Gordon, Appellant, v. Ervin Hoffman *et al.*, Michael Paul Kluthe. Ramsey County.

Affirmed. Scott, J. Dissenting, Otis, J. Took no part, Simonett, J.

51150/380 William T. Kealy, Jr., v. St. Paul Housing & Redevelopment Authority, *et al.*, Relators. Workers' Compensation Court of Appeals.

It is not for this court to rewrite a statute that is not ambiguous. When the words of a statute are clear and free from all ambiguity, the letter of the law may not be disregarded under the pretext of implementing the legislature's intent. We call this case to the legislature's attention should this opinion not reflect the results intended by the 1976 amendment to Minn. Stat. § 176.061(6)(c).

Reversed and remanded with instructions. Scott, J.

51002/Sp. State of Minnesota v. Bill C. Kinyon, Appellant. Olmsted County.

Evidence of defendant's guilt of sale of a controlled substance was sufficient.

The trial court did not prejudicially err in denying a defense motion to prohibit the prosecutor from cross-examining defendant, if he testified concerning a prior conviction for felonious possession of marijuana.

The trial court did not abuse its discretion in granting a jury request for the rereading of the testimony of the state's key witness.

Affirmed. Wahl, J.

51577/373 In the Matter of the Application for the Discipline of Dennis F. Peck, an Attorney at Law of the State of Minnesota and for the Appointment of a Trustee. Supreme Court.

Indefinite suspension from practice of law. Per Curiam.

Decision Filed Tuesday, January 27, 1981

51982/Sp. State of Minnesota, Plaintiff, v. Kevin Mitchell Stankey. Scott County.

When a driver's license is revoked because of driving while under the influence, it continues to be revoked within the meaning of the aggravated driving while under the influence statute. Minn. Stat. § 169.129 (1978), until a new license is issued, regardless of the specific reason the driver is prevented from obtaining a reinstated license.

Reversed and remanded. Sheran, C. J.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Department of Commerce Office of Consumer Services Residential Utility Consumer Unit

Notice of Request for Proposals for Rate Design and Cost Studies for Northwestern Bell Telephone Company

Krista L. Sanda, Director of the Office of Consumer Services of the Minnesota Department of Commerce, is soliciting proposals from qualified consultants to perform an analysis of local exchange rate structures, measured service rates, coin phone rates, service charges and/or depreciation rates in connection with the petition of Northwestern Bell Telephone Company for authority to increase its rates by a total additional annual revenue of \$102.5 million. Respondents may address one or more issues in this case. The petition is currently before the Minnesota Public Utilities Commission and a hearing will be held.

Final submission date: March 9, 1981

Estimated cost: \$2,000-\$25,000 depending upon scope of proposal.

Contact by phone at (612) 296-6172 or in writing to:

Diane Legatt Hunt, Case Manager
Residential Utility Consumer Unit
Office of Consumer Services
Minnesota Department of Commerce
162 Metro Square Building
Seventh and Robert Streets
St. Paul, Minnesota 55101

Department of Transportation Clearwater County Highway Department

Notice of Availability of Contract for Highway Detail Engineering

The Clearwater County Highway Department in cooperation with the Office of State Aid, Minnesota Department of Transportation requires the services of a qualified consultant to provide detail engineering for the construction of Clearwater CSAH 40 across the Mississippi River floodplain.

The services shall consist of in site sampling and testing of organic peat soils, laboratory testing and analysis, construction recommendations and preparation of detail plans. The construction of Clearwater CSAH 40 is in an environmentally sensitive area and the final design shall provide the least negative environmental impact.

Firms desiring consideration should submit their brochure and/or experience resume, such as the federal forms 254 and 255 within 21 days. This is not a request for proposal.

Please send your response to:

Arthur D. Tobkin, P.E.
Clearwater County Engineer
Box 310
Bagley, Minnesota 56621
Telephone (218) 694-6132

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Commerce Banking Division

Bulletin No. 2336: Maximum Lawful Rate of Interest for Mortgages and Contracts for Deed for the Month of February 1981

Notice is hereby given that pursuant to § 47.20, subd. 4a, Minnesota Statutes, the maximum lawful rate of interest for conventional home mortgages for the month of February, 1981, is fifteen (15.00) percentage points.

Further, pursuant to Senate File No. 273, Chapter 373, 1980 Session Laws, as it amended § 47.20, Minnesota Statutes, the maximum lawful rate of interest for contracts for deed for the month of February, 1981, is fifteen (15.00) percentage points.

January 22, 1981

Michael J. Pint
Commissioner of Banks

Department of Education Vocational-Technical Education Division

Notice of Intent to Solicit Outside Opinion Regarding Rules and Changes in Rules for Secondary Vocational Education

The Department of Education, Division of Vocational-Technical Education is drafting rules and changes in the Secondary Vocational Education Rules (Chapter Five-A, 5 MCAR § 1.00811 D.2.b.(2)(b): E.).

The Department invites interested persons or groups to provide information, comment and advice on these subjects in writing or orally to:

Dr. Mary Thornton Phillips
Assistant Commissioner
Division of Vocational-Technical Education
564 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Written statements will be made part of the public hearing record.

All materials to be considered in the original draft should be submitted by March 4, 1981.

Department of Natural Resources

Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Douglas County

Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that a public hearing in the above-entitled matter pursuant to Minnesota Statutes, § 105.391, subd. 1 (1979) will be held in Commissioner's Room, Court House, Alexandria, Minnesota, on February 25, 1981, commencing at 10:00 a.m. and continuing until all persons have had an opportunity to be heard. The hearing will be conducted by a three-person hearings unit consisting of County representative Bernie Rachel, 1712 Liberty Road, Alexandria, Minnesota 56308, Department of Natural Resources representative Merlyn Wesloh, and Douglas Soil and Water Conservation District representative Wayne Holl, Route 1, Hoffman, Minnesota 56339.

Each of the waters listed in this notice is the subject of a petition for a hearing. The issue to be determined at the hearing is

whether the following waters shall be designated public waters or wetlands pursuant to Minnesota Statutes, Section 105.391 (1979) and the criteria contained in Minnesota Statutes, Section 105.37, Subdivisions 14 and 15 (1979):

A. Public Waters

1. Basins

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
21-51: Henry Lake	7,18	128	37
21-92: Lake Mary	Various	127; 128	38
21-305: Venus Lake	14,15,22	128	40
21-330: Unnamed	5,8	129	40

2. Watercourses

<u>Name</u>	<u>Beginning in Section</u>	<u>Township</u>	<u>Range</u>	<u>Outletting in Section</u>	<u>Township</u>	<u>Range</u>
Long Prairie Creek	16 (Basin 57)	129	37	24	129	36
Unnamed to Lake Osakis	15 (Basin 504)	127	36	25	128	36

B. Wetlands

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
21-66: Unnamed	35	129	37
21-511: Unnamed	26,35	128	36
21-512: Unnamed	28	128	36
21-521: Unnamed	29	130	36
21-524: Unnamed	8	128	37

Within 60 days following completion of the hearing, the hearing unit shall issue its findings of fact, conclusions and an order, which shall be considered the decision of an agency in a contested case for purposes of judicial review pursuant to Minnesota Statutes, §§ 15.0424 and 15.0425.

Any activity that would change the course, current or cross-section of public waters or wetlands requires a permit from the Commissioner of Natural Resources. Minnesota Statutes, § 105.42, subd. 1 (1979). Designation as public waters or wetlands does not transfer ownership of the bed or shore, does not grant the public any greater right of access to those waters than was available prior to designation and does not prevent a landowner from utilizing the bed of those waters for pasture or cropland during periods of drought. Minnesota Statutes, § 105.391, subds. 10 and 12 (1979).

All petitioners may be represented by counsel or anyone else of their choosing and shall be given an opportunity to be heard orally, to present and cross-examine witnesses and to submit written data, statements or arguments. Petitioners should bring all evidence bearing on these matters including maps, records or other documents.

Failure to attend may result in the challenged waters being designated public waters or wetlands and may prejudice your rights in this and subsequent proceedings.

Questions concerning this Notice and Order may be directed to any member of the hearings unit or to:

David B. Milles,
DNR—Division of Waters
Third Floor, Space Center Building
444 Lafayette Road
Saint Paul, MN 55101
Telephone: 612/297-2835

January 28, 1981

Joseph N. Alexander, Commissioner

**Department of Natural Resources
Soil and Water Conservation Board**

Notice of Change of Meeting Date

The Minnesota Soil and Water Conservation Board has changed the date of their regular monthly meeting from March 10, 1981 to March 9, 1981.

The Minnesota Soil and Water Conservation Board has changed the meeting place of their March meeting from the 6th floor, Space Center Building, St. Paul, Minnesota, to the Radisson-Arrowwood, Alexandria, Minnesota. The board will resume their regular schedule on April 14, 1981.

STATE OF MINNESOTA
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State Register and Public Documents Division
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FOR LEGISLATIVE NEWS

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Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

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This Week—weekly interim bulletin of the House. Contact House Information Office.

Minnesota Reports—Old editions available at \$8.25 each plus tax. These are Supreme Court decisions. Recent volumes are available at the Supreme Court, Office of Court Administrator, 317E Capitol, St. Paul, MN 55155. Volumes available are 312 and previous numbers.

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